ORIGINAL

IN THE

UNITED STATES SUPREME COURT

Supreme Court, U.S.
FILED
MAY 17 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO: 87-6997 (2)

EUGENE JOHN CARELLA,

Appellant/Defendant

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee/Plaintiff

ON APPEAL FROM ORDER AND JUDGMENT OF

THE SUPERIOR COURT, STATE OF CALIFORNIA,

FOR THE COUNTY OF LOS ANGELES

APPELLATE DEPARTMENT

JURISDICTIONAL STATEMENT

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APPELLANT

30 pp

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QUESTIONS PRESENTED BY APPEAL

I.

California Penal Code Section 484 And Presumptions Contained Therein Are Constitutionally Flawed And Egregiously Violate Appellant's Right To A Jury Trial By Removing As A Matter Of Law The Intent Element From Consideration And Deliberation By The J As Guaranteed By The Fourteenth Amendmer .

In Re Winship, 377 U.S. 358, 90 S.Ct. 1068, 25 L.E. 2d 368 (1970)

II.

California Penal Code Section 484 Is Constitutionally Invalid And Infirmed Because It Transposes The Burden Of Proof From The Prosecution To The Defendant Appellant Herein, And Presumes Defendant's Guilt Of Specious Charges Rather Than His Innocence And Is In Flagrant Violation Of Fundamental Fairness Doctrine Guaranteed by the Fourteenth Amendment Due Process Clause And Impermissibly Relieves State Of Its Constitutional Burden of Persuasion Beyond a Reasonable Doubt Of Every Element Of Alleged Crime.

Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.E. 2d 39 (1979)

Patterson v. New York, 432 U.S. 197, 97 S.Ct. 2319, 53 L.E. 2d 281 (1977)

Mullaney v. Williams, 421 U.S. 684, 95 S.Ct. 1881, 44 L.E. 2d 508 (1975)

People v. Hedrick, 105 Cal. App. 3d 166, 164 Cal. Rptr 169 (1980)

III.

Penal Code Section 484 Violates Appellant's Due Process Rights Because It Conclusively Presumes Defendant-Appellant's Intention To Commit "Theft" By Fraud If Property Is Not Returned After Demand Without Any Statutory Requirement That Appellant Have Actual Knowledge Of The Demand For Return of Property.

People v. Hedrick, supra.

People v. Hemmer, 96 Cal. Rptr 516 (1971)

IV.

Vehicle Code Section 10851 And 10855 Are Both Violative Of The Defendant's Constitutional Rights To A Trial By Jury Of All The Elements Of A Crime, And Unconstitutionally Shifts The Burden Of Proof From The People To Defendant And Otherwise Usurp A Function Constitutionally Reserved For the Jury In Derogation Of Fourteenth Amendment.

Francis vs. Franklin 105 S.Ct. 1965 , 85 L. Ed. 2d 344 (1985)

V.

Penal Code Section 484(b) And (c) Are Both Constitutionally Invalid Because They Violate Appellant's Right To Have A Jury, As Trier-Of-Fact, Weigh, Consider And Deliberate All Evidence Of Defendant's Intent And Deprives Appellant His Right To A Jury Trial, And Are Otherwise Statutorily Arbitrary And Capricious And Void As A Matter Of Law.

People v. Burres, 161 Cal. Rpt. 593 (1980)

In Re Winship, supra

VI.

Vehicle Code Section 10851, Et Seq., Is Constitutionally Void And Invalid And Unenforceable Because Of Ambiguity And Vagueness In That It Does Not Sufficiently Or Adequately "Apprise" Or "Notice" Defendant With Requisite Specificity As To "Owner" Statutorily Contemplated, Or Place Or Location As to Where Subject Property Is To Be Returned.

Sixth and Fourteenth Amendment
United States Constitution

VII.

Penal Code Section 484 And Vehicle Code Section 10855 Are Both Constitutionally Invalid And Void Because They Diminish And Reduce, As A Matter Of Law, The Burden Of Proof Imposed Upon The Prosecution By The Fourteenth Amendment Due Process Clause.

In Re Winship, 377 U.S. 358, 90 S.Ct. 1068

VIII.

Appellant's Rights Guaranteed By Article 1, Section 9 and 10 The United States Constitution Are Violated By The Penal Code Section 484 And Vehicle Code §10855 Which Seek By Their Statutory Force To Convert A Civil Contractual Relationship Into Evidence Of A Criminal Misconduct, Otherwise Alter, Distort The Kinds And Quantum Of Evidence Necessary To Prove The Existence Of A Crime, And Further Directly Impair And Alter Existing Obligations Of Contract Recognized And In Force.

Article 1, Section 9
Article 1, Section 10
United States Constitution

IX.

Appellant's Right To A Speedy Trial Guaranteed By The Fourteenth Amendment to the United States Constitution Was Consciously Violated By The Trial Judge Because Trial Was Not Commenced Within Forty-Five (45) Days Of His Arraignment On June 27, 1985 And Did Not Commence For Almost Nine (9) Months Later, And Because Trial Judge Refused Appellant's Demand To Dismiss Action With Prejudice Pursuant To Section 1382 Of The California Penal Code Which Compels Mandatory Dismissal, And Where Defendant Did Not Waive Right To A "Speedy Trial" And Where Trial Transcripts Evidence Non-Waiver.

Sixth Amendment
Fourteenth Amendment
U. S. Constitution

X.

Failure To Accord Appellant's Right To A Reporter's Transcript Of Trial Evidence At Public Expense When Appellant Is Financially Indigent, And Where Transcripts Are Essential To Document Gross Constitutional Error And Infirmity (Twenty-Four (24) Claims On Appeal), Combined With Appellate Court's Refusal To Consider Each of The Grounds On Appeal Whose Errors Included Gross Bias, Prejudice And Discrimination By Trial Court Before Jury, And Criminal Prosecutorial Misconduct, Suppression of Evidence, Refusal To Instruct As To Appellant's Defenses Or To Grant Hearing On Jury Charges Violate Due Process Provisions

Of The Fourteenth Amendment Of The United States Constitution As Held By The California Supreme Court.

In Re Armstrong, 126 CA 3d. 565
178 CR 902 (1981)

XI.

Appellant's Right To A Fair Trial And Fair Appeal Were Both Egregiously Abridged By The Trial Judge And Superior Court (Sitting As Appellate Department) Who, Despite Extreme Bias And Discrimination Against Appellant, And Statutory Cause Disqualification Proceeded To Adjudicate Appellant's Trial And Appeal, Notwithstanding Appellant's Vigorous And Incessant Statutory Demands To Have Said Judges Recused And Prohibited From Acting, And Despite The Provisions of C.C.P. Section 170, Et Seq., Which Apply To ALL California Municipal And Superior Court Judges For The County Of Los Angeles.

Sixth and Fourteenth Amendments
United States Constitution

XII.

Trial Judge's Willful Refusal To Grant Appellant Arraignment On Misdemeanor Sentencing, Refusal To Grant Pre-Sentencing Probation Report And Pre-Sentencing Probation Hearing, Even Though Demanded By Appellant Who Has Outstanding

Professional And Academic Background And No Criminal Convictions And Combined With Refusal To Permit Appellant To Reasonable Bail Or Release Him On His Own Recognizance Pending Disposition Of His Immediate Appeal Summate To Violate Appellant's Right To A Fair Trial and Fair Appeal Guaranteed By The Fourteenth Amendment.

In Re Bakke, 42 Cal. 3d 84 (1986)

In Re John Desmond O'Driscoll, L.A. Daily Appellate Report May 21, 1987, 1st App Dist.

(b)

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(d)

REPORTS OF OPINIONS AND DECISIONS BELOW

None of the opinions below has been published in official or non-official reports. The actual text of said decisions appealed from is found in the Appendix of this document.

(e)

GROUNDS FOR JURISDICTION

(i) Nature of Proceeding:

This is an appeal from a criminal misdemeanor prosecution based upon two (2) unconstitutional state statutes pertaining to an alleged unlawful taking and theft af on automobile entrusted to Defendant with express contractual permission, authorization and consent and pursuant to a written civil contract, where all of the contractual provisions were ignored by the rental car company, and resort was made to Section 10851 of the Vehicle Code of the State of California and Section 484 of the Penal Code to enforce "a civil obligation." This appeal is taken upon final judgments rendered by the highest court of the State of California in which a decision could be had, and is based upon the invalidity of two state statutes, i.e., Penal Code Section 484 and Vehicle Code Section 10855 et seq. as being repugnant to the Constitution and laws of the United States and where the state appellate department ruled in favor of their validity 28 U.S.C. Section 1257(2). (See also Rules 10, 11 - United States Supreme Court.)

(ii) Crucial Dates Pertaining To Appeal:

1. Date of Entry of Judgment and Decree Sought to Be Reviewed on Appeal 2/3/88

2. Date of Denial of Petition for Rehearing... 2/24/88 to Be Reviewed on Appeal

3. Date and Notice of Appeal Was Filed in Los Angeles Superior Court for the County of Los Angeles, State of California, Appellate Department 4/11/88

(iii) Statutory Provisions Conferring Jurisdiction On This Court Of Appeal:

28 U.S.C. Section 1257(2)

28 U.S.C. Section 1254

28 U.S.C. Section 2103

(f)

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

The following constitutional provisions and state statutes are set out verbatim in the Appendix of this document:

California Penal Code Section 484

California Vehicle Code Section 10851 and 10855

Article I, Section 9, 10 the U. S. Constitution

Fourteenth Amendment of the U. S. Constitution

Sixth Amendment of the U. S. Constitution

STATEMENT OF THE CASE

1. Pre-Trial Proceedings.

In the early morning of June 27, 1985, Appellant, Eugene John Carella, an attorney nationally recognized in Who's Who In American Law and Who's Who In California, specializing in federal litigations and appellate work, and, in particular ERISA (Employee Retirement Income Security Act of 1974) litigation, residing in Los Angeles, California, was falsely arrested at his residence in Westwood, California, by Beverly Hills detectives Schwab (a former rental agency car owner) and a Doe detective. At the time of the subject false arrest while Appellant was asleep in his apartment, said detectives threatened Appellant and his fiancee with an automatic weapon which said detectives later placed at Appellant's head stating "they would blow Appellant's brains out if he spoke."

Appellant was falsely arrested for alleged violations of § 10851 of the Vehicle Code and § 484 of the Penal Code with respect to the subject rental vehicle furnished to him pursuant to a written rental contract. A two-count misdemeanor complaint was filed by the District Attorney for the County of Los Angeles and the proceedings denominated as Los Angeles Municipal Court No. M 83675 were commenced on June 27, 1985 against Appellant.

Appellant was brought before John Murphy, who unbenounced to Appellant, was a commissioner of said court, and not a judge. At no point in time from June 27, 1985 up and to the time that

Appellant first learned of the status of said John Murphy as a commissioner on December 2, 1985, and moved for his recusal was Appellant ever apprised by the court of his status, nor did Appellant ever consent to said commissioner, nor did he ever make an intelligent waiver of his right to be arraigned or otherwise have his trial presided over by a judge of the municipal court.

The false criminal charges instigated against Appellant emanated from a written rental automobile contract furnished to Appellant and offered in evidence by the People which defined and controlled the relationship of the parties, including the rental car company, which, in fact, was MPG Car Rental (not the legal owner or registered owner). The charging allegations recited the legal owner of the vehicle to be Ciero and Cierra (Sierra) Car Rental. Appellant was not furnished with a written copy of the subject complaint despite a specific demand by him until on or about December 2, 1985.

On June 27, 1985, Appellant refused to waive his right to a speedy trial and the matter was continued to July 1, 1985 by the then acting commissioner and continued again to August 9, 1985, and again to October 20, 1985. At no point in time did the commissioner or the District Attorney or any other judicial person ever advise Appellant of his specific constitutional rights with respect to a speedy arraignment or speedy trial, nor did they ever advise Appellant of the specific consequences of making any waiver of his rights to a speedy trial or otherwise

secure the statutory consent of Appellant to waive said rights. At no point in time did Appellant waive his right to a speedy trial.

On October 20, 1985, Appellant moved to dismiss the subject false charges relating to the interpretation of a "civil rental contract" on the grounds that he had not been brought to trial timely, had not been accorded a probable cause hearing though in custody at the time of his "arraignment" and that the provisions of § 1382 of the Penal Code were mandatory, not discretionary, and that the commissioner was compulsed to dismiss the false charges at once and to cease and desist in further conduct of the litigation. Appellant further advised the trial court that the proceedings were in total want of probable cause, malicious and vexatious in nature, and carried out for purposes of harming Appellant in his person, property and livelihood.

Appellant renewed his motion again on December 2, 1985 for a mandatory dismissal and also specifically inquired as to whether John Murphy was a judge as indicated on the daily trial calendar posted on his courtroom door, inasmuch as Appellant never consented to the jurisdiction of a commissioner. It was at this point in time that John Murphy first made a disclosure that he was a commissioner (after he had denied Appellant's § 1382 motion to dismiss). Appellant forthwith moved for recusal and the cause was then reassigned by said commissioner to visiting Judge R. Reynolds, sitting in Devision 5.

Upon learning from Appellant that he had not received a written copy of the complaint filed against him, said Judge Reynolds furnished Appellant with a copy of the complaint and further advised him in open court that Ciero Rental Car was listed as the legal owner of the subject rental vehicle as recited in the complaint, notwithstanding that Appellant had rented the subject vehicle from MPG Car Rental, and this disclosure by the court totally surprised and astounded Appellant.

On December 16, 1985, the matter came on in Division 5 again at which time Appellant renewed his motion to dismiss the subject proceedings for failure to accord him a speedy trial and because of the bogus charges and that there was no probable cause or probable cause hearing extended to Appellant despite his demand for same while in custody at the time of his "arraignment." Appellant's motions were denied.

On January 13, 1986, a subsequent visiting judge from Northern California, identified as Judge Morse, presiding over the cause in Division 5 without prior notice to Appellant, threatened, intimidated and sought to silence Appellant in his attempts to have the subject charges dismissed against him pursuant to § 1382 of the Penal Code and to declare a mistrial, inasmuch as no court despite their constitutional requirement to do so, had specifically made a detailed reading of the charges brought against Appellant, or the consequences that would attach in the event that Appellant were to waive any of the constitutional rights accorded him under the state and federal constitution. Appellant's motion was denied and

his request for continuance to seek a writ with the Appellate Department of the Superior Court was also denied. This notwithstanding the absence of any evidence whatsoever that the court had made the proper instructions to Appellant regarding his constitutional rights or the effect of waiving same.

On March 7, 1986, pursuant to written motion set for hearing on that day in Division 2 of the Municipal Court, Appellant moved to dismiss the subject complaint on the grounds that statutes and the statutory presumptions contained in Vehicle Code § 10855 and Penal Code Section 484, et seq., were unconstitutional; that the subject statutes were constitutionally void for vagueness and ambiguity; that the subject criminal prosecution was a prosecution for a "civil debt" involving substantial questions of contractual interpretation and validity properly the subject of civil dispute and contract grievance resolution procedures and impaired the mutuality of obligation provisions of the Constitution; and that the statutory presumptions improperly and unconstitutionally deprived Appellant of having each and every element of the case heard before the jury and intruded upon the jury function, and were arbitrary and capricious, and otherwise unconstitutionally shifted the burden of proof from the prosecution to the defendant. Said motion was denied on March 7, 1986.

2. Trial Proceedings.

On March 17, 1986, the matter came on for jury trial and jury selection. During voir dire Appellant vigorously sought to challenge the juror list and juror pool from whence the jurors were selected. The trial court sitting as Judith O. Stein, who was assigned to the proceedings without prior notice

to Appellant, adamantly abridged and obstructed Appellant's efforts. Appellant's right to ask prospective jurors questions pertinent to the proper and fair discharge of their functions as jurors, including conflicts of interest questions, associations, prior awareness or knowledge by them of Appellant or the subject cause was strenuously foreclosed by the trial court and deprived Appellant of his right to select jurors who would accord him a fair and impartial trial. During the voir dire process on March 17, 1986, said Judith O. Stein exhibited gross and extreme bias and hostility and ill-will toward Appellant of such a magnitude and proportion as to lead a reasonable disinterested third person to conclude that she could not accord Appellant a fair trial and that her actions toward Appellant in view of the jurors had unduly prejudiced and would continue to prejudice Appellant and deprive him of his right to receive a fair and impartial trial by jury.

On March 18, 1986, Appellant forthwith moved for the "immediate disqualification" for cause in writing of said Judith O. Stein on several grounds -- and, in particular, that she had ex parte communications with the District Attorney and other third persons gained outside of the courtroom and had acted in concert with said third parties to grossly harm Appellant and his right to have a fair and impartial trial. The trial judge prevented Appellant from filing the subject disqualification petition and/or lodging said document with the Clerk of the court and Appellant specifically designates said Motion for Disqualification sought to be filed and/or lodged by him. The Disqualification Petition also sought to

have Judge Stein cease and desist from all further conduct in the trial proceedings and to have the disqualification motion heard and adjudicated in accordance with the proper legal procedures for same. In short, the trial court not only prevented Appellant from his timely and efficacious challenge to her and his right to receive a fair trial, but she retaliated by maliciously and malevolently prevent Appellant from speaking or otherwise carrying forward with his defense by placing him in contempt, removing him from the courtroom, and incarcerating him and imposing monetrary fines and penalties without cause and to impede the presentation of his defense. The bias and disparagement by the trial court was done in the presence of the jurors and done to irreparably "taint" Appellant and otherwise prejudicehim in the eyes of the jurors.

On March 18, 1986, Appellant filed his request to charge the jury (jury instructions) and made specific requests upon the trial court to refrain from giving any instructions as to the presumptions contained in 10855 of the Vehicle Code or § 484 of the Vehicle Code, as the instruction by her on these presumptions constituted infirming reversible constitutional error deprived Appellant of his right to have the jury decide all elements of the alleged offenses, and the statutes transposed the burden of proof from the People to Defendant, and otherwise prevented him a fair trial. Appellant also specifically requested an oral hearing on the jury instructions to ensure that the court would not instruct as to the presumptions, as to do so would be per se error, and to otherwise ensure that the court would instruct specifically and affirmatively the jury as to

the requested defenses of Appellant concerning the good faith mistake of fact and good faith belief and Appellant's legal right and title to the subject vehicle conferred pursuant to the terms and provisions of the automobile rental contract and agreement entered into evidence by the prosecution by which the vehicle was furnished to Appellant and other specific intent instructions.

The trial court specifically refused to grant Appellant any hearing, and otherwise refused to give the affirmative instructions referenced above, despite her absolute requirement to do so existing in all prosecutions of this type, and further compounded the harm by then instructing the jurors as to the statutory presumptions contained in the aforereferenced sections over the objection of Appellant.

The People's evidence consisted of three witnesses -- two employees of MPG Car Rental who furnished the jury with conflicting, perjured statements concerning the facts and events relating to the subject transactions and a Detective Schwab of the Beverly Hills Police Department, a former Budget Rental Car franchise owner/agent -- who sought to use the police powers to enforce a "civil contract."

testimony of the People's witnesses, together with their documentary evidence, showed that they had sent a certified letter to Appellant which was never received by him, and they did not produce any evidence whatsoever that Appellant had, in fact, received any written communication or other communication concerning the subject vehicle. Further, all of the People's witnesses testified that despite the fact that they knew

Appellant lived "a little more than one mile from the rental office" where the vehicle was rented in Beverly Hills that not one of them came by to his apartment, left a note, or otherwise sought to personally visit him or to check on the subject vehicle which was parked in Appellant's [open] garage every night. The People's evidence was also deficient in that there were discrepancies in the lack of authentication as to which rental vehicle contract was in effect and otherwise controlled the contractual relationships of the parties and the knowledge of the respective MPG Car Rental people as to the specific amounts of monies that Appellant furnished to the rental car company when he was furnished the subject vehicle. The People's evidence was also conflicting and equivocal as to who as the legal owner of the subject rental vehicle.

Further, all of the People's witnesses testified that none of them ever made a written demand for additional monies owed purportedly pursuant to the contract on Appellant. Further, all of the People's witnesses testified that they had furnished the subject rental vehicle to Appellant with their permission and consent and that at no point in time was that permission and consent revoked with the knowledge of Appellant.

The prosecution represented by Deputy District Attorney Alarcon committed gross and prejudicial prosecutorial misconduct throughout the entire trial proceedings. In addition to derogatory and personal disparagement of Appellant, said district attorney conducted numerous ex parte communication with the trial court in an attempt to fix the juror pool and to prejudice Appellant in light of the jury's eyes. Additionally,

the prosecution commencing with his opening statement put before the jurors written documents, charts and graphs without any evidentiary support, foundation, and without otherwise being corroborated which grossly misrepresented the factual circumstances concerning the transactions -- all to the prejudice and detriment of Appellant and over his continuing objections to strike said documents from being shown to the jurors or permitting the prosecution to refer to said documents as though they were evidence. All of the motions made by Appellant to strike and the concomitant motion for a mistrial for prosecutorial misconduct were also denied by the trial court.

Appellant's motion to dismiss the proceedings at the close of the People's case on the basis of insufficient evidence and on the basis of malicious prosecution, and on the basis that the statutes sued upon by the People were constitutionally invalid, defective, and void for vagueness were all denied by the trial court on or about March 19, 1986.

Appellant's defense was grossly stunted and irreparably prejudiced by the disparaging and prejudicial remarks made by the trial court in front of the jury and the continuing use of threats of contempt, fines and incarceration by the trial court with the express purpose of interfering with Appellant's defense. Appellant produced evidence at the time of trial by direct testimony that he had been physically in Westwood in the Los Angeles area each and every day and night during the subject period in question and had been actively involved as an attorney and/or litigant in numerous legal proceedings located in the Superior Court for the County of Los Angeles.

Central District, and U. S. District Court for the Central District of California during the periods in time in question and material to the defense that Appellant had absolutely no intent to "embezzle or unlawfully take a rental vehicle" which he had received "pursuant to a written contract, vesting permission and authorization in him." In particular, Appellant respectfully demanded that the trial court take judicial notice mandatory pursuant to the Evidence Code of Appellant's attendance on June 17, 1985 at the U. S. District Court, located at 312 No. Spring Street, where he was seeking attorneys fees owed to him under various statutes in the amount at that time of $140,000+; a proceeding where Appellant appeared before a retired judge acting as a referee in a Superior Court litigation on June 20, 1985 at 3255 Wilshire Boulevard in Los Angeles; judicial notice of an EEOC complaint filed at the federal office on or about June 21, 1985, wherein Appellant had brought a discrimination claim where his employer had unjustifiably terminated his contract valued at $100,000+ without cause and in bad faith; an appearance at Santa Monica Municipal Court on June 21, 1985 to satisfy a traffic citation issued on June 6, 1985 -- as well as other proceedings within two (2) weeks of the subject false arrest of Appellant on June 27, 1985. The trial court denied all of the demands of Appellant to take judicial notice or to enable Appellant to file documents of these proceedings, severely injuring and prejudicing his defense and his motion for a new trial.

Appellant also produced evidence by his fiancee that she had actually accompanied him on May 11, 1985 the offices of MPG Car Rental located approximately one mile from Appellant's

residence in Beverly Hills and that she was aware that Appellant had cash monies on him and had actually gone to the offices of MPG Car Rental but said office was closed, or there was no agent on duty, whereupon Appellant secured gas at the Union Station contiguous with the MPG Car Rental located at Doheny and Wilshire and had secured a receipt signed and dated May 11, 1985 which Appellant sought to move into evidence after it was corroborated by his witness as being a true and correct receipt. The trial court suppressed the document from evidence which Appellant specifically sought to introduce at trial and otherwise prevented the witness from testifying as to her knowledge as to the events in question on May 11, 1985 when Appellant was physically at the rental offices of MPG Car Rental in Beverly Hills, (See Appendix)

Appellant also produced evidence from a Jennifer Ayers of the Beverly Hills Police Department that she was, in fact, on duty on or about June 5, 1985 when Appellant called, returning Detective Schwab's call on June 3, 1985, and when she advised Appellant that Detective Schwab was on "an extended vacation" and when Appellant provided said Jennifer Ayers with his telephone number, address so that Detective Schwab could contact him upon his return from vacation.

Appellant produced sufficient evidence vitiating any intent by him to "take or permanently deprive the legal owner" of title to the subject rental vehicle and, in fact, all of the evidence produced by Appellant showed that he was carrying forward with his duties and responsibilities as an attorney in the federal court system, and as an individual who had

numerous litigations pending in the Superior Court for the State of California, Central District. The trial court committed serious reversible error by constantly harassing Appellant's witness who was percipient to the events in question and went well beyond the bounds of permissible and acceptable judicial conduct and threatened and intimidated Appellant's witness in the eyes of the jurors. The trial court's bias, prejudice and hostility was also exemplified by totally outrageous misuse of power in having Appellant's witness improperly and over her objection searched on her person and purse.

The verdict entered by the jury on March 26, 1986 was grossly infirmed and defective because it was secured by fraud and misconduct of the trial court acting in collusion with the District Attorney who irreparably threatened Appellant and his cause in their eyes, and because there is a total failure of evidence to support the verdict. Additionally, the verdict was obtained in violation of Appellant's constitutional rights by the trial court refusing to recuse herself by her refusal to make the instructions requested by Appellant in the Jury Instructions filed by him on March 18, 1986, and because she consciously instructed the jury on the presumptions contained in the Vehicle Code and Penal Code when she was constrained as a matter of law not to do so. (See Appendix).

3. Post Trial And Appellate Proceedings.

Appellant filed a notice of appeal on April 7, 1986 from various orders of trial judge Stein, including the immediate imposition of sentencing and judgment, where the trial judge

foreclosed Appellant any arraignment on sentencing; refused his application for a pre-sentence report, probation report and pre-sentencing probation hearing; refused to stay the sentence and judgment pending his appeal to the Appellate Department, and refused to permit Appellant's release on reasonable bail, and, in essence, "forced" him to serve two (2) months of false incarceration as an object of the aforereferenced conspiracy, through the instrument of the false criminal prosecution now before this Court on appeal. The trial judge, District Attorney, and various CIA/National Security Council hand-appointed jurors consciously and deliberately planned and plotted to irreparably destroy Appellant, a distinguished attorney recognized in Who's Who in American Law and Who's Who in California in his totality by falsely imprisoning him and seeking to disparage and denigrate his legal skills and acumen and to discredit his veracity in furtherance of a massive high-level government conspiracy and coverup against Appellant and to subject him to life-threatening imprisonment and harm.

Since April 7, 1986, Judge Stein, and Los Angeles Superior Court judges sitting as the Appellate Department, as well as their predecessors and other governmental co-conspirators authorized by Administration officials have sought to obscure and obfuscate the aforereferenced criminal misconduct and conspiracy on appellate review by "thwarting Appellant's access to secure the Reporter's Trial Transcripts of Evidence" by falsely arresting him again while attempting to secure said transcripts; by consciously refusing to settle the statement

on appeal in a truthful and legally accurate sufficient manner; by eliminating documents from the Clerk's Record on Appeal -- so as to produce a record on appeal legally insufficient in all respect to enable Appellant to document his grounds for appeal as recited in his Proposed Settled Statement of Evidence. Moreover, the aforesaid judges and various governmental persons have actively conspired with Judges Margolis, Woods, Newman, Robertson to consciously abrogate the Rules of Court and United States Constitution over Appellant's substantial protestation. In short, the conduct of the judges whose action is the subject of this appeal has been calculated to invalidate the appellate process; to obscure meaningful appellate review; to conceal and cover up massive criminal actions and conduct undertaken by them with others against Appellant and to irreparably deny Appellant a fair and meaningful appellate hearing in derogation of Appellant's due process and equal protection rights guaranteed by the United States Constitution and his right to a fair trial.

The judges assigned to hear the appeal, despite having been advised by Appellant of the conscious racketeering conspiracy of the trial court and District Attorney to falsely imprison, harm and carry out false processes against Appellant, and despite being apprised of the fraudulent settled statement certified by the trial judge not comporting with rules and laws of California (Rules 183-189 and People v. Jenkins, and despite having been apprised in Appellant's Motion for Reporter's Transcript at Public Expense on January 28, 1988 (see Appendix) (prior to the hearing of the appeal) of the absolute necessity for said transcripts of evidence, as well

Appellant's financial incapacity to pay for same, have acted and continue to act to frustrate and obstruct the evidence of the criminal misconduct carried out against Appellant prepared by the Court Reporter and used to document his appeal consistent with Appellant's constitutional rights. In Re Armstrong, 126 CA 3d 565 (1981).

Shortly after discovering the identity of the Los Angeles Superior Court judges assigned to the Appellate Department, and immediately upon learning of their denial of his Motion for Reporters Transcripts of Trial Evidence at Public Expense on February 4, 1988, Appellant filed a "Motion for Disqualification of Jack Newman, Alfred Margolis, Frederick Woods, Robert Robertson, judges of Los Angeles Superior Court Appellate Department (see Appendix). Almost concurrently, and only a few days after the aforereferenced judges denied Appellant's Motion for Preparation of Reporters Transcripts of Evidence at Public Expense, said judges entered a memorandum judgment which constitutes a gross fraud and miscarriage of justice affirming the judgment of the trial judge which is the subject of this appeal. (See Appendix).

On February 17, 1988, Appellant filed his formal statutory demand to Clerk of Los Angeles Superior Court Appellate Department advising the Judicial Council to select a judge to adjudicate disqualification, said demand made pursuant to Rule 170.3(c)(5)(6), and also demanded an evidentiary hearing on the motion for disqualification filed on February 5, 1988. (See Appendix). The subject demand was made by Appellant

after Respondents Margolis, Newman, Woods and Robertson answered by affidavit the merits of Appellant's motion and admitted serious allegations contained therein.

The Appellant's motion to disqualify was made pursuant to C.C.P. § 170.3(c), et seq. and specifically so recites in the body of the motion. The disqualification statutes are very clear and precise in that a "judge" for purposes of application of the disqualification statutes, Sections 170 to 170.5, is defined to mean "judges of the justice, municipal and SUPERIOR COURTS ..." It is beyond cavil that Margolis, Woods, Robertson are all judges of the Los Angeles Superior Court, and they themselves admitted they were Los Angeles Superior Court judges. (See Los Angeles Superior Court Judges Listing - Parker Director of California - p. 91, 92) within ambit of disqualification statute and susceptible to disqualification challenges.

Appellant in his statutory demand of February 17, 1988 formally demanded that said judges Newman, Margolis, Robertson and Woods cease at once from all further conduct and action in the subject appeal consistent with the provisions of § 170.3(c)(1)(5) which proscribes the judges from passing upon his or her own disqualification or upon the sufficiency in law, fact or otherwise of the Statement of Disqualification filed by Appellant herein.

On February 18, 1988, Appellant filed his timely petition for rehearing and application for transfer and produced substantial new evidence in the form of declaration showing

that the February 3, 1988 appellate order was a fraud on its face. A true copy of said Petition for Rehearing is attached. (See Appendix). Also in the petition for rehearing, Appellant reaffirmed his disqualification to Judges Margolis, Newman, Woods and Robertson from acting on his appeal in any capacity whatsoever.

On February 26, 1988 Appellant sought to confirm the transmittal of his demand to the Judicial Council filed by him on February 17, 1988 and was advised by the Clerk of the Los Angeles Superior Court Hardey that he willfully refused and continued to refuse to transmit the disqualification motion and Appellant's demand that the Judicial Council act to appoint a judge to adjudicate Petitioner's motion for disqualification of Judges Margolis, Woods, Newman and Robertson.

On February 26, 1988, Appellant learned for the first time that Judges Margolis, Woodr, Robertson and Newman, despite the prohibitions of Section 170.4(d) stating a "judge shall have no power to act in any proceeding after his or her disqualification, OR after the filing of a statement of disqualification until the question of his or her disqualification has been determined," proceeded to enter a fraudulent order on February 24, 1988 (nineteen (19) days after Appellant filed his Motion for Disqualification, denying Appellant's Petition for Rehearing, stay of remittitur, and other relief. (See Appendix). The action of these judges constitute a nullity and is evidence of a conscious misuse of process carried out against Appellant, and when combined with the unconstitutional state statute referenced herein, requi e

the judgment be vacated at once by this Court on appeal.

(h)

STATEMENT OF IMPORTANCE OF QUESTIONS PRESENTED

The questions and issues presented by the subject appeal demonstrate gross constitutional infirmities with the criminal statutes by which Appellant has been falsely prosecuted, falsely convicted, and falsely imprisoned. Further, the statutory presumptions subsumed in each of the aforereferenced statutes, whose invalidity is the subject of this appeal, are also blatantly unconstitutional on their face and are grossly invalid in light of the United States Supreme Court holdings found and contained in the following mandates: In Re Winship, 377 U.S. 358, 90 S.Ct. 1068, 25 L.E. 2d 368 (1970); Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.E. 2d 39 (1979); Patterson v. New York, 432 U.S. 197, 97 S.Ct. 2319, 53 L.E. 2d 281 (1977); and Mullaney v. Williams, 421 U.S. 684, 95 S.Ct. 1881, 44 L.E. 2d 508 (1975); Francis v. Franklin, 105 S.Ct. 1965, 85 L.E. 2d 344 (1985).

This Court's jurisdiction has been properly invoked pursuant to 28 U.S.C. § 1257(2) and it is vital and imperative that the Court exercise its jurisdiction to strike down both of these statutes which constitute gross constitutional violations of Appellant's rights. Accordingly, The Court must act to throw out the judgement at once.

BY: EUGENE J. CARELLA, ESQ.